

1 Timothy M. Frank (*pro hac vice*)
2 tfrank@twwlaw.com

3 **T. WADE WELCH & ASSOCIATES**
2401 Fountainview, Suite 700
Houston, Texas 77057
Telephone: (713) 952-4334
4 Facsimile: (713) 952-4994

5 Roy K. McDonald (State Bar No. 193691)
6 roy.mcdonald@dlapiper.com
Stephen A. Chiari (State Bar No. 221410)
7 stephen.chiari@dlapiper.com
DLA PIPER US LLP

8 153 Townsend Street, Suite 800
San Francisco, California 94107-1957
9 Telephone: (415) 836-2547
10 Facsimile: (415) 659-7447

11 Attorneys for Plaintiffs/Counter-defendants

12
13 **UNITED STATES DISTRICT COURT**
14 **FOR THE NORTHERN DISTRICT OF CALIFORNIA**
SAN JOSE DIVISION

15 ECHOSTAR SATELLITE L.L.C. et al.,

16 Plaintiffs,

17 v.

18 FREETECH, INC. and DOES 1-10,

19 Defendants.
20

21 FREETECH, INC.,

22 Counterclaimant,

23 v.

24 ECHOSTAR SATELLITE L.L.C. et al.,

25 Counter-defendants.
26
27
28

Case No. CV-07-6124 (JW)

**PLAINTIFFS' ANSWER TO
DEFENDANT'S COUNTERCLAIMS**

ANSWER TO COUNTERCLAIMS

1
2 1. Plaintiffs/Counter-defendants EchoStar Satellite L.L.C., EchoStar Technologies
3 Corporation, and NagraStar L.L.C. (collectively, "Plaintiffs") admit that the Court has jurisdiction
4 over the counterclaims filed by Defendant/Counterclaimant Freetech, Inc. ("Defendant"). Except
5 as expressly admitted, Plaintiffs deny the allegations in this paragraph of the counterclaims.

6 2. Plaintiffs are informed and believe and on that basis admit that Defendant imports
7 and distributes Coolsat-branded satellite receivers capable of receiving, without limitation, free-
8 to-air satellite transmissions. Except as expressly admitted, Plaintiffs deny the allegations in this
9 paragraph of the counterclaims.

10 3. Plaintiffs are without sufficient information to form a belief as to the truth of the
11 allegations in this paragraph of the counterclaims and therefore deny same.

12 4. Plaintiffs are informed and believe and on that basis admit that Coolsat-branded
13 receivers are designed to receive satellite transmissions. Except as expressly admitted, Plaintiffs
14 deny the allegations in this paragraph of the counterclaims.

15 5. Plaintiffs admit that satellite receivers capable of receiving satellite transmissions
16 have been available to consumers for several years. Plaintiffs are without sufficient information
17 to form a belief as to the truth of the remaining allegations in this paragraph of the counterclaims
18 and therefore deny same.

19 6. Plaintiffs are informed and believe and on that basis admit that a company now
20 operating under the EchoStar Europe trade name, at one time or another, distributed receivers
21 capable of receiving free-to-air satellite transmissions. The EchoStar Europe website speaks for
22 itself and therefore Plaintiffs deny the second and fifth sentences. Except as expressly admitted
23 or denied, Plaintiffs deny the allegations in this paragraph of the counterclaims.

24 7. Plaintiffs are informed and believe and on that basis admit that Coolsat-branded
25 receivers are capable of receiving, without limitation, free-to-air satellite transmissions that are
26 freely available. Except as expressly admitted, Plaintiffs deny the allegations in this paragraph of
27 the counterclaims.

28 8. Plaintiffs admit that certain satellite transmissions are not scrambled or encrypted

1 and freely available to viewers. Plaintiffs are without sufficient information to form a belief as to
2 the truth of the remaining allegations in this paragraph of the counterclaims and therefore deny
3 same.

4 9. Plaintiffs are without sufficient information to form a belief as to the truth of the
5 allegations in this paragraph and therefore deny same.

6 10. Plaintiffs are without sufficient information to form a belief as to the truth of the
7 allegations in this paragraph and therefore deny same.

8 11. Plaintiffs are without sufficient information to form a belief as to the truth of the
9 allegations in this paragraph and therefore deny same.

10 12. Plaintiffs are without sufficient information to form a belief as to the truth of the
11 allegations in this paragraph and therefore deny same.

12 13. Plaintiffs are without sufficient information to form a belief as to the truth of the
13 allegations in this paragraph and therefore deny same.

14 14. Plaintiffs are without sufficient information to form a belief as to the truth of the
15 allegations in this paragraph and therefore deny same.

16 15. Plaintiffs are without sufficient information to form a belief as to the truth of the
17 allegations in this paragraph and therefore deny same.

18 16. Plaintiffs admit that DISH Network programming is delivered through encrypted
19 or scrambled satellite transmissions to consumers that have acquired the necessary equipment and
20 after payment of a subscription fee. Except as expressly admitted, Plaintiffs deny the allegations
21 in this paragraph of the counterclaims.

22 17. Plaintiffs admit that DISH Network subscribers can opt to receive programming
23 packages that contain international content for an additional fee. Plaintiffs are without sufficient
24 information to form a belief as to the truth of the remaining allegations in this paragraph of the
25 counterclaims and therefore deny same.

26 18. Plaintiffs are informed and believe and on that basis admit that CCTV-9 is freely
27 available to satellite television consumers that have the necessary equipment, including DISH
28 Network customers. Plaintiffs admit that CCTV-9 is also part of the "Great Wall TV Package"

1 made available to DISH Network customers at an additional fee. Except as expressly admitted,
2 Plaintiffs deny the allegations in this paragraph of the counterclaims.

3 19. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

4 20. Plaintiffs are without sufficient information to form a belief as to the truth of the
5 allegations in this paragraph and therefore deny same.

6 21. Plaintiffs are informed and believe and on that basis admit that evidence available
7 at this time suggests that Coolsat-branded receivers distributed by Defendant typically require the
8 addition of software to receive encrypted DISH Network programming. Except as expressly
9 admitted, Plaintiffs deny the allegations in this paragraph of the counterclaims.

10 22. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

11 23. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

12 24. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

13 25. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

14 26. Plaintiffs admit that Coolsat-branded receivers have data ports as alluded to in the
15 Complaint. Plaintiffs are without sufficient information to form a belief as to the truth of the
16 remaining allegations in this paragraph and therefore deny same.

17 27. Plaintiffs are informed and believe and on that basis admit that a company now
18 operating under the EchoStar Europe trade name, at one time or another, distributed receivers
19 capable of receiving free-to-air satellite transmissions, and that firmware downloads are available
20 at www.echostareurope.com. Plaintiffs are without sufficient information to form a belief as to
21 the truth of the remaining allegations in this paragraph and therefore deny same.

22 28. Plaintiffs are without sufficient information to form a belief as to the truth of the
23 allegations in this paragraph and therefore deny same.

24 29. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

25 30. Plaintiffs are without sufficient information to form a belief as to the truth of the
26 allegations in this paragraph and therefore deny same.

27 31. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

28 32. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

33. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

34. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

35. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

36. Plaintiffs are without sufficient information to form a belief as to the truth of the allegations in this paragraph and therefore deny same.

37. Plaintiffs are without sufficient information to form a belief as to the truth of the allegations in this paragraph and therefore deny same.

38. Plaintiffs admit that the quoted material currently appears at www.coolsatusa.com/inc.php?inc=terms. Plaintiffs are without sufficient information to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny same.

39. Plaintiffs admit that the quoted material currently appears at www.coolsatusa.com/inc.php?inc=support. Plaintiffs are without sufficient information to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny same.

40. Plaintiffs admit that the quoted material currently appears at www.coolsatusa.com. Plaintiffs are without sufficient information to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny same.

41. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

42. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

43. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

44. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

45. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

46. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

47. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

48. Plaintiffs deny that Defendant did not illegally receive or otherwise acquire profits and property of Plaintiffs. Plaintiffs are without sufficient information to form a belief as to the truth of the remaining allegations in this paragraph and therefore deny same.

49. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

50. Plaintiffs admit this litigation was initiated against Defendant for the acts set forth

1 in the Complaint. Plaintiffs are without sufficient information to form a belief as to the truth of
 2 the remaining allegations in the first sentence and therefore deny same. The remainder of this
 3 paragraph states legal conclusions to which no response is required, and if required, denied.

4 **FIRST CAUSE OF ACTION**

5 **Declaration Of No Violation Of the Digital Millennium Copyright Act**

- 6 51. Plaintiffs incorporate their responses to paragraphs 1-50 of the counterclaims.
- 7 52. Plaintiffs admit the allegations set forth in this paragraph of the counterclaims.
- 8 53. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

9 **SECOND CAUSE OF ACTION**

10 **Declaration Of No Violation Of Section 605(a) of the Communications Act**

- 11 54. Plaintiffs incorporate their responses to paragraphs 1-53 of the counterclaims.
- 12 55. Plaintiffs admit the allegations set forth in this paragraph of the counterclaims.
- 13 56. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

14 **THIRD CAUSE OF ACTION**

15 **Declaration Of No Violation Of Section 605(e)(4) of the Communications Act**

- 16 57. Plaintiffs incorporate their responses to paragraphs 1-56 of the counterclaims.
- 17 58. Plaintiffs admit the allegations set forth in this paragraph of the counterclaims.
- 18 59. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

19 **FOURTH CAUSE OF ACTION**

20 **Declaration Of No Violation Of the Electronic Communications Privacy Act**

- 21 60. Plaintiffs incorporate their responses to paragraphs 1-59 of the counterclaims.
- 22 61. Plaintiffs admit the allegations set forth in this paragraph of the counterclaims.
- 23 62. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

24 **FIFTH CAUSE OF ACTION**

25 **Declaration Of No Violation Of California's Bus. & Profs. Code § 17200**

- 26 63. Plaintiffs incorporate their responses to paragraphs 1-62 of the counterclaims.
- 27 64. Plaintiffs admit the allegations set forth in this paragraph of the counterclaims.
- 28 65. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

FIFTH [sic] CAUSE OF ACTION

Declaration Of No Unjust Enrichment

66. Plaintiffs incorporate their responses to paragraphs 1-65 of the counterclaims.
67. Plaintiffs admit the allegations set forth in this paragraph of the counterclaims.
68. Plaintiffs deny the allegations set forth in this paragraph of the counterclaims.

PRAYER FOR RELIEF

Plaintiffs deny that Defendant is entitled to any of the requested relief.

AFFIRMATIVE DEFENSES

Plaintiffs assert the following defenses in response to Defendant's counterclaims:

1. Each counterclaim fails to state a claim for relief upon which relief can be granted.
2. Each counterclaim fails to present an actual case or controversy.
3. Each counterclaim is barred, in whole or in part, by the doctrine of unclean hands.

DATED: May 21, 2008

Respectfully submitted,

T. WADE WELCH & ASSOCIATES

By: /s/ Timothy M. Frank
Timothy M. Frank (*pro hac vice*)

Attorneys for Plaintiffs/Counter-defendants

PROOF OF SERVICE

I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is DLA Piper US LLP, 153 Townsend Street, Suite 800, San Francisco, California 94107-1957. On May 22, 2008, I served the within documents:

PLAINTIFFS' ANSWER TO DEFENDANT'S COUNTERCLAIMS


- ☐ by transmitting via facsimile the document(s) listed above to the fax number(s) set forth below on this date before 5:00 p.m.
- ☒ by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at San Francisco, California addressed as set forth below.
- ☐ by personally delivering the document(s) listed above to the person(s) at the address(es) set forth below.

Jonathan S. Bae, Esq.
2201 Broadway, Suite M5
Oakland, CA 94612
Tel: (510) 834-4357
Fax: (510) 663-6731

I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on May 22, 2008, at San Francisco, California.


Judith A. Fazackerley